

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telscape Communications, Inc.,

Complainant.

vs.

Pacific Bell Telephone Company,

Defendant.

Case 02-11-011
(Filed November 5, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING PETITIONS
TO INTERVENE OF AT&T COMMUNICATIONS OF
CALIFORNIA, INC. AND WORLDCOM, INC.**

Background

In this complaint, Telscape Communications, Inc. (Telscape) claims that Pacific Bell Telephone Company (SBC California)¹ engages in a variety of anticompetitive practices. After a prehearing conference held on January 7, 2003, the Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo), issued January 15, 2003, grouped the violations alleged in the complaint into four broad areas, identified the factual and legal areas currently in dispute, and set a schedule for the proceeding. AT&T Communications of California, Inc. (AT&T)

¹ Subsequent to the filing of the complaint, Pacific Bell Telephone Company changed its name to SBC California. The new name will be used in the discussion, though the caption remains unchanged.

filed a Petition to Intervene on February 5, 2003, accompanied by a Motion to Shorten Time for Reply to Petition for Intervention.² SBC filed a Conditional Opposition to AT&T's Petition to Intervene on February 20, 2003. WorldCom, Inc. (WorldCom) filed a Petition to Intervene on February 21, 2003, accompanied by a Motion for Order Shortening Time to Respond. AT&T filed a Motion for Permission to File a Reply to SBC California's Conditional Opposition to AT&T's Motion to Intervene on February 24, 2003; AT&T's Reply was filed February 27, 2003. SBC California filed a Conditional Opposition to WorldCom's Petition to Intervene on February 27, 2003. Also on February 27, Telscape filed a Reply to SBC California's Conditional Opposition to AT&T's Petition to Intervene. WorldCom filed a Motion for Leave to File a Reply to SBC California's Conditional Opposition to WorldCom's Petition to Intervene, accompanied by the Reply, on March 4, 2003.³

The petitions to intervene were timely filed, and all subsequent papers were filed in accordance with the Rules of Practice and Procedure and the directions of the assigned Administrative Law Judge (ALJ).

Intervention

Intervention in a complaint proceeding is governed by Rule 53 of the Commission's Rules of Practice and Procedure.⁴ A proposed intervenor must

² No action was taken on AT&T's request to shorten time.

³ This Ruling addresses all papers filed with respect to the petitions to intervene. In the interest of saving time and resources, the ALJ notified counsel for the parties and proposed intervenors by electronic mail on February 24, 2003 of the schedule for completing submission of papers on the intervention requests.

⁴ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the

Footnote continued on next page

seek leave in writing at least five days before the start of the evidentiary hearing and must “set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner’s position is in support of or opposition to the relief sought.” The proposed intervenor must also indicate whether it seeks a broadening of the issues in the proceeding.

The parties and the proposed intervenors acknowledge that the issues in this proceeding are governed by the Scoping Memo. Both proposed intervenors assert that they are not seeking to broaden this proceeding beyond the issues already identified.

AT&T

AT&T seeks to participate in three of the four issue areas identified in the Scoping Memo: “winback practices,” “slamming,” and “DSL.” AT&T disclaims any interest in the fourth area, “billing/O[perational] S[upport] S[ystems] (OSS).” In support of its participation, AT&T describes difficulties it asserts it has had with SBC California’s behavior about winback, slamming, and DSL services over the course of several years. AT&T also states that it supports the relief requested by Telscape. AT&T asserts that it can participate in this proceeding without any changes to the current schedule.

In its Conditional Opposition, SBC California asserts that because AT&T does not clearly adopt any claims made in Telscape’s complaint, it has not complied with Rule 53. Rule 53 does not, however, require adoption of other parties’ claims as a condition of intervention. Instead, it requires the proposed intervenor to explain its position and interests and state whether it opposes or

California Code of Regulations, and citations to sections refer to the Public Utilities Code.

supports the relief already requested. AT&T has presented the information required by Rule 53 in its Petition and Reply.

SBC California also asserts that Telscape's allegations about slamming pertain only to dial tone service. Thus, AT&T's participation based on its description of problems related to SBC California's handling of slamming in local toll and long distance services, as well as dial tone, would unduly broaden the proceeding. As both AT&T and Telscape point out, neither the complaint nor the Scoping Memo so limit the issues related to slamming.

Although AT&T states that it can comply with the current schedule in this case, SBC California seeks to have the schedule adjusted if intervention is granted. Since both SBC California and Telscape have indicated in their papers that the schedule may need to be adjusted for reasons other than any grant of intervention, the question of scheduling will be separately addressed below.

AT&T's Petition to Intervene should therefore be granted.

WorldCom

WorldCom seeks to participate in all of the issue areas identified in the Scoping Memo: winback practices, slamming, billing/OSS, and DSL. In support of its participation, WorldCom also describes difficulties it asserts it has had with SBC California's behavior about winback, slamming, billing, and DSL services over the course of several years. WorldCom also states that it supports the relief requested by Telscape and that it can participate in this proceeding without any changes to the current schedule.

In its Conditional Opposition, SBC California reiterates its claim in opposition to AT&T that Telscape's allegations about slamming pertain only to dial tone service and that WorldCom's participation based on its description of problems related to SBC California's handling of slamming in local toll and long

distance services, as well as dial tone, would unduly broaden the proceeding. As noted above, this claim is not supported by the complaint or the Scoping Memo, and does not bar intervention.

SBC California also raises questions about the breadth of WorldCom's participation in the billing/OSS issues. Although this issue area potentially includes many particularized problems that may not be identical for Telscape and WorldCom, the Scoping Memo focuses on the systemic aspect of the billing/OSS issues, rather than any specific instances. As long as WorldCom's evidence is relevant to the billing/OSS issues as characterized in the Scoping Memo, its participation will not broaden the scope of the proceeding.

SBC California's request to have the schedule adjusted if intervention is granted is addressed below.

WorldCom's Petition to Intervene should therefore be granted.

Scheduling

Since both SBC California and Telscape indicate that scheduling issues have arisen independent of the requests for intervention, a second prehearing conference (PHC) by telephone will be held to discuss possible revisions to the schedule in this case. The PHC will be separately noticed.

In the Scoping Memo, the parties were advised that any discovery motions filed pursuant to Rule 45 should be scheduled for a Law and Motion session. In view of the interventions and possible revisions to the schedule, it will be more appropriate for any discovery motions to be handled by the assigned ALJ.

IT IS RULED that:

1. The Motion of AT&T Communications of California, Inc. (AT&T) for Permission to File a Reply to SBC California's Conditional Opposition to AT&T's

Petition to Intervene, dated February 24, 2003, is granted. AT&T's reply is due February 27, 2003.

2. The Motion for Order Shortening Time to Respond to Petition to Intervene of WorldCom, Inc. (WorldCom), dated February 21, 2003, is granted in part. The time to file responses to WorldCom's Petition to Intervene is shortened to February 27, 2003.

3. The Motion by WorldCom, Inc. for Leave to File a Reply to SBC California's Conditional Opposition to WorldCom's Petition to Intervene, dated March 4, 2003, is granted.

4. The petition to intervene of AT&T Communications of California, Inc. is granted. AT&T's participation is limited to the issues in the groups "winback practices," "slamming," and "DSL" in the Scoping Memo and Ruling of Assigned Commissioner, dated January 15, 2003 (Scoping Memo).

5. The petition to intervene of WorldCom, Inc. is granted. WorldCom's participation is limited to the issues identified in the Scoping Memo.

6. Any motions about discovery disputes filed pursuant to Rule 45 shall be addressed to the assigned ALJ, but not scheduled for a Law and Motion session unless referred by the assigned ALJ.

Dated March 7, 2003, at San Francisco, California.

/s/ Anne E. Simon

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Petitions to Intervene of AT&T Communications of California, Inc. and WorldCom, Inc. on all parties of record in this proceeding or their attorneys of record.

Dated March 7, 2003, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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